

² The Board notes that, following the April 4, 2019 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden to establish a lower back condition causally related to the accepted September 26, 2017 employment incident.

FACTUAL HISTORY

On September 26, 2017 appellant, then a 34-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her back when she was involved in car accident while in the performance of duty. She did not stop work.

In a statement of even date, E.V., appellant's supervisor, explained that on September 26, 2017 at approximately 3:40 p.m. he received a call from appellant stating that she was involved in a motor vehicle accident. Upon arrival at the scene, he spoke with first responders who indicated that she was complaining of neck and back pain. When describing the accident, E.V. noted that appellant's vehicle was legally parked on the right side of the road and another vehicle struck its left rear side.

Appellant also submitted a position description of her duties as a city carrier.

In a development letter dated October 4, 2017, OWCP informed appellant of the deficiencies of her claim. It advised of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. It afforded her 30 days to respond.

In a September 26, 2017 medical report, Dr. Jason D'Amore, a Board-certified emergency medicine physician, evaluated appellant for lower back pain after a motor vehicle accident in which she was sitting in her parked postal vehicle and was rear-ended by another vehicle. He noted a diagnostic report of even date in which she underwent an x-ray scan of her lumbar spine that revealed scoliosis. Dr. D'Amore diagnosed back pain and prescribed medication.

In an October 10, 2017 medical report, Dr. Susanna Sheppard, a physician Board-certified in physical medicine and rehabilitation, conducted an evaluation of appellant in relation to the September 26, 2017 employment incident. She detailed the history of the motor vehicle accident and appellant's subsequent medical treatment. Appellant informed Dr. Sheppard that she was previously involved in a 2012 motor vehicle accident that resulted in a diagnosis of a herniated disc status post physical-therapy. She noted that her pain in her neck had since resolved, but claimed that the September 26, 2017 employment incident resulted in a return of neck pain. On evaluation Dr. Sheppard noted myofascial derangement to the cervical and lumbar spine, most likely disc involvement and sacroiliac joint pain with post-traumatic headaches, dizziness, and blurry vision. She arranged for appellant to begin physical therapy and to undergo further diagnostic testing. Dr. Sheppard held her off work.

³ 5 U.S.C. § 8101 *et seq.*

In an October 20, 2017 diagnostic report, Dr. Samuel Mayerfield, a Board-certified radiologist, conducted an x-ray scan of appellant's cervical spine, finding straightening cervical lordosis and thoracic levoscoliosis. In a diagnostic report of even date, he performed an x-ray scan of her sacrum and coccyx, finding osteitis pubis.

In an October 23, 2017 diagnostic report, Dr. Steven Winter, a Board-certified radiologist, conducted a magnetic resonance imaging (MRI) scan of appellant's sacrum that returned negative.

Appellant also submitted physical therapy treatment notes dated October 10 to 27, 2017.

By decision dated November 20, 2017, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed condition causally related to the accepted September 26, 2017 employment incident.

OWCP continued to receive evidence. In an October 23, 2017 diagnostic report, Dr. Winter performed an MRI scan of appellant's lumbar spine, which revealed a C5/6 broad posterior subligamentous disc herniation with a ventral thecal sac impression, C6/7 posterior disc bulging with thecal sac impression, and subligamentous posterior disc bulging at C4/5.

In a November 7, 2017 medical report, Dr. Sheppard saw appellant for a follow-up physiatric evaluation and noted minimal improvements with physical therapy. On evaluation and review of appellant's diagnostic studies she diagnosed myofascial derangement to the cervical and lumbar spine with multilevel cervical disc bulges, C5-6 disc herniation with L5-S1 one millimeter retrolisthesis and subligamentous posterior disc bulging and bilateral sacroiliac joint pain with post-traumatic headaches, dizziness, and blurred vision status post appellant's work-related motor vehicle accident. Dr. Sheppard recommended that appellant continue her physical therapy sessions and undergo electrodiagnostic studies for further evaluation.

On December 22, 2017 appellant requested reconsideration of OWCP's November 20, 2017 decision.

Appellant submitted a September 26, 2017 medical note with an illegible signature, advising that she be excused from work until September 29, 2017.

In an October 4, 2017 medical note, Junie Futrell, a physician assistant, provided that appellant needed to be evaluated by orthopedics before she could return to work and recommended that she perform no lifting.

Appellant submitted an October 10, 2017 attending physician's report (Form CA-20) with an illegible signature that diagnosed lower back pain and a sprain of the sacroiliac joint and check a box marked "Yes" to indicate that her condition was caused or aggravated by the September 26, 2017 employment incident.

In medical notes dated October 10 and November 7, 2017, Dr. Sheppard provided that appellant would be incapacitated from November 7, 2017 until she is evaluated again on December 21, 2017. She explained that appellant was unable to work because of the September 26, 2017 employment incident and diagnosed cervical disc displacement, lumbar disc displacement and a sprain of the sacroiliac joint.

In a December 28, 2017 medical report, Dr. Sheppard noted that appellant's symptoms of headaches and dizziness had resolved, but she was still experiencing difficulty twisting and turning her neck, bending forward, sitting, standing, or walking for extended periods of times, as well as blurred vision. On evaluation she diagnosed myofascial derangement to the cervical and lumbar spine with multilevel cervical disc bulges, C5-6 disc herniation with L5-S1 one millimeter retrolisthesis and subligamentous posterior disc bulging and bilateral sacroiliac joint pain with blurred vision status post appellant's work-related motor vehicle accident. In a medical note of even date, Dr. Sheppard recommended that appellant be excused from work from December 28, 2017 to February 8, 2018 due to her diagnosed conditions.

In a subsequent February 15, 2018 medical report, Dr. Sheppard noted that appellant's blurred vision had resolved and diagnosed myofascial derangement to the cervical and lumbar spine with multilevel cervical disc bulges, C5-6 disc herniation with L5-S1 one millimeter retrolisthesis, and subligamentous posterior disc bulging and bilateral sacroiliac joint pain status post appellant's work-related motor vehicle accident. She recommended that appellant undergo further physical therapy and electrodiagnostic studies for further evaluation.

By decision dated March 9, 2018, OWCP denied modification of its November 20, 2017 decision.

OWCP continued to receive evidence. In a February 15, 2018 medical note, Dr. Sheppard advised that appellant be excused from work from February 15 to April 3, 2018 and diagnosed cervical disc displacement, lumbar disc displacement, and a sprain of the sacroiliac joint.

In medical reports dated April 17 and May 15, 2018, Dr. Sheppard evaluated appellant for her continued symptoms relating to the September 26, 2017 employment incident. She diagnosed myofascial derangement to the cervical and lumbar areas of the spine with multilevel cervical disc bulges, C5-6 disc herniation with L5-S1 one millimeter retrolisthesis and subligamentous posterior disc bulging status post appellant's work-related motor vehicle accident. Dr. Sheppard noted that appellant's bilateral sacroiliac joint pain and dizziness had resolved, but her post-traumatic headaches and blurred vision remained.

In medical reports dated from July 18, 2018 to January 2, 2019, appellant was evaluated by Drs. Guatam Khakhar and Albert Villafuerte, Board-certified in pain management and rehabilitation, who observed her complaints of neck pain radiating to her arms with numbness and tingling, low back pain radiating to the legs, and headaches in relation to the September 26, 2017 employment incident. On examination they diagnosed myofascial derangement to the cervical and lumbar spine with multilevel cervical disc bulges, C5-6 disc herniation, L5-S1 one millimeter retrolisthesis, and subligamentous posterior disc bulging and bilateral sacral pain with improved headaches status post her work-related motor vehicle accident.

On February 12, 2019 appellant, through counsel, requested reconsideration of OWCP's March 9, 2018 decision. In an attached a November 21, 2018 medical report from Dr. Villafuerte, he again evaluated appellant's treatment in relation to the September 26, 2017 motor vehicle accident and diagnosed cervical derangement, cervical disc herniation and disc bulge, lumbar disc herniation, and disc bulge and headaches. In a medical note of even date, he found that she was

unable to return to work from November 21, 2018 to January 2, 2019 due to her diagnosed conditions.

In a January 9, 2019 medical note, Goldie Alissandratos, a nurse practitioner, opined that appellant was unable to work at that time.

By decision dated April 4, 2019, OWCP denied modification of its March 9, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and this component can be established only by medical evidence.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

⁴ *Id.*

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.¹⁰

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lower back condition causally related to the accepted September 26, 2017 employment incident.

Appellant submitted multiple medical reports dated from October 10, 2017 to May 15, 2018 where Dr. Sheppard performed physiatric evaluations in relation to the September 26, 2017 motor vehicle accident. Dr. Sheppard reviewed the history of appellant's injury and the development of appellant's related symptoms. She also acknowledged that appellant was involved in a prior 2012 motor vehicle accident that resulted in a diagnosis of a herniated disc status post physical therapy. Dr. Sheppard noted that appellant's neck pain in relation to her 2012 injury had resolved, but claimed that the September 26, 2017 employment incident caused her pain to return. She diagnosed myofascial derangement to the cervical and lumbar spine with multilevel cervical disc bulges, C5-6 disc herniation with L5-S1 one millimeter retrolisthesis and subligamentous posterior disc bulging and bilateral sacroiliac joint pain with post-traumatic headaches, dizziness, and blurred vision status post appellant's work-related motor vehicle accident. However, Dr. Sheppard did not offer any rationale for this opinion relative to causal relationship. The Board has held that medical opinion evidence should offer a medically-sound explanation of how the specific employment incident or work factors physiologically caused the injury.¹² Further, as noted above, in any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the medical evidence must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition. As Dr. Sheppard did not specifically differentiate between appellant's preexisting condition and the effects of the accepted September 26, 2017 employment incident, and appellant did not explain how the motor vehicle accident aggravated her preexisting condition, her medical reports are insufficient to establish causal relationship.¹³

Dr. Khakhar's July 18, 2018 medical report observed appellant's symptoms in relation to the September 26, 2017 employment incident and diagnosed myofascial derangement to the cervical and lumbar spine with multilevel cervical disc bulges, C5-6 disc herniation, L5-S1 one

¹⁰ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹² *See H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹³ *Supra* note 11.

millimeter retrolisthesis and subligamentous posterior disc bulging and bilateral sacral pain with improved headaches status post her work-related motor vehicle accident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁴ For this reason, Dr. Khakhar's medical report is insufficient to meet appellant's burden of proof.

Similarly, Dr. Villafuerte, in medical reports dated from October 10, 2018 to January 2, 2019, evaluated appellant's treatment in relation to the accepted September 26, 2017 motor vehicle accident and diagnosed cervical derangement, cervical disc herniation and disc bulge, lumbar disc herniation, and disc bulge and headaches. However, as he did not offer an opinion on causal relationship, the reports are of no probative value.¹⁵ They are, therefore, insufficient to establish appellant's claim.

Dr. D'Amore, in a September 26, 2017 medical report, indicated that he had evaluated appellant after her September 26, 2017 motor vehicle accident and diagnosed back pain. The Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁶ For this reason, Dr. D'Amore's September 26, 2017 medical report is insufficient to meet appellant's burden of proof.

Appellant submitted multiple diagnostic studies dated from October 20 to 23, 2017 from Drs. Mayerfield and Winter. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁷ These reports are, therefore, insufficient to establish the claim.

Appellant also submitted multiple medical and physical therapy notes signed by nurse practitioners, physician assistants, and physical therapists. The Board has long held that certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA.¹⁸ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

The remaining medical evidence consist of a September 26, 2017 medical note and an October 10, 2017 Form CA-20 with illegible signatures. The Board has held that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper

¹⁴ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *Id.*

¹⁶ See *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹⁷ *K.S.*, Docket No. 19-1623 (issued March 19, 2020); *M.J.*, Docket No. 19-1287 (issued January 13, 2020).

¹⁸ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also *supra* note 11 at Chapter 2.805.3a(1) (January 2013); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

identification that the author is a physician.¹⁹ Accordingly, these documents are insufficient to meet appellant's burden of proof to establish her claim.

As appellant has not submitted rationalized medical evidence establishing a diagnosed condition causally related to the accepted September 26, 2017 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a lower back condition causally related to the accepted September 26, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ *J.P.*, Docket No. 19-0197 (issued June 21, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).